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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/826,957

04/08/2004

Howard G. Dolezal JR.

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EXAMINER

CORBIN, ARTHUR L

ART UNIT

PAPER NUMBER

1794

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/826,957	<b>Applicant(s)</b> DOLEZAL ET AL.	
	<b>Examiner</b> Arthur L. Corbin	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07-12-04, 10-07-05, 01-11-08.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-66 is/are rejected.
- 7) ☒ Claim(s) 14-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>071204, 100705</u> .  | 6) <input type="checkbox"/> Other: _____                          |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4, 8, 48, and 63-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 is identical in scope to claim 1 and thus does not further limit claim 1. Claim 8 is identical in scope to claim 7 and thus does not further limit claim 7. There is no antecedent basis: in claim 34 for “said muscle” (claim 48); in claim 61 for said “buffering agent” (claims 63, 64), which can be corrected by making claims 63 and 64 dependent upon claim 62; and in claim 49 for “said muscle” (claim 65). Corrections are required without new matter.

3. Claims 14-16 are objected to because of the following informalities: In each of claims 14-16, line 2, “from” should be changed to “to”. Appropriate correction is required.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 1-6, 9-11, 12-25, 27, 34-36, 40, 41, 43, 50-52 and 54 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Calkins et al (US 2002/0054941, pages 1-5). Calkins et al discloses enhancing the tenderness of dark-cutting beef by treating with a composition including citric acid or a salt thereof in an amount as claimed by applicant (claims 23-25, 27) in order to obtain a pH as claimed by applicant (claims 12-16, 20). The treatment occurs by injection, marinating or spraying and is followed by packaging of the beef.

7. Claims 37-39, 42, 53 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al. Dark-cutting meat typically has a pH as claimed by applicant (claim 37, 53). Tumbling meat in a treatment solution (claims 39, 55) and a drip/rest period are conventional techniques in the treatment of meat.

8. Claims 7, 8, 26, 28, 33, 48, 49 and 56-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al in view of Komarik (3,526,521, Abstract and cols. 2-3). It would have been obvious to include GDL and sodium erythorbate (claims 7, 8, 26, 48, 49) in the treatment composition of Calkins et al to aid in curing the meat therein since it is well known to treat meat with GDL to lower the pH thereof and with sodium erythorbate to aid in curing, as evidenced by Komarik. The use of sodium acid sulfate as a meat acidulant (claim 28) is conventional.

9. Claims 29-32 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al in view of Nakao et al (3,666,488, cols. 2-3). It would have been obvious to include a phosphate buffer (claims 29, 30, 45-47) in the treatment composition used in Calkins et al since it is well known to treat meat with a composition

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including citric acid, as in Calkins et al, and a phosphate buffer, as evidenced by Nakao et al.

10. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al in view of Tracy et al (4,576,825, cols. 2-3) or Holdren et al (5,736,186, col. 6). It would have been obvious to encapsulate the citric acid used in Calkins et al since it is well known to treat meat with encapsulated citric acid, as evidenced by either Tracy et al or Holdren et al.

11. Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al in view of Komarik as applied to the claims in paragraph no. 8 above, and further in view of Tracy et al or Holdren et al. Tracy et al or Holdren et al is applied as in paragraph no. 11 above.

12. Claims 62-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al in view of Komarik as applied to the claims in paragraph no. 8 above, and further in view of Nakao et al. Nakao et al is applied as in paragraph no. 9 above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arthur L Corbin  
Primary Examiner  
Art Unit 1794

13. /Arthur L Corbin/

14. Primary Examiner, Art Unit 1794